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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/635,397
Filing Date: August 06, 2003
Appellant(s): KLINE, CHRISTOPHER N.

Christopher Kline
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 9, 2008 appealing from the Office action

mailed August 1, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

- McAfee, McAfee Utilities: User's Guide Version 4.0 (Jan. 2001).

- Microsoft Support, "Description of the Low Disk Space Notification in Windows XP" http://support.microsoft.com/kb/285107.

- Microsoft Support, "How to Automate the Disk Cleanup Tool in Windows XP" http://support.microsoft.com/kb/315246.

- Microsoft Support, "How to Use the Backup Utility to Back Up Files and Folders in Windows XP Home Edition" http://support.microsoft.com/kb/320820/en-us.

- "Disk Defragmenter Error Codes" (July 2, 2001) http://www.aumha.org/a/defragerr.php.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 5-6, 8, 12-14, 18-19, 25-26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAfee Utilities Version 4.0 User's Guide ("the McAfee Manual")

in view of "Description of the Low Disk Space Notification Tool in Windows XP" ("the Disk Space article"), and further in view of "How to Automate the Disk Cleanup Tool in Windows XP" ("the Disk Cleanup article").

Claim 1: The McAfee Manual discloses a method for scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, comprising:

- providing a distributed computing environment with a plurality of servers including said at least one server (see page iii: "Server-Mode," disclosing using the product on a server);

- monitoring server conditions on said at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said at least one server in said distributed computing environment (see pages 39-40: "Crash Protector" discloses "continuously monitors your system to detect when an application performs an invalid operation or damages any critical part of your system. When such 'Fault' conditions occur, Crash Protector suspends the application and displays the following dialog box."); and

- performing said at least one maintenance task in response to said monitoring step (see id.),

The McAfee Manual does not explicitly disclose wherein said at least one predetermined criterion comprises low disk space on said at least one server.

The Disk Space article discloses "when a Windows XP-based computer is running low on disk space, you receive a 'Low Disk Space' message that, when clicked, "starts the Disk Cleanup Wizard" (see page 1: Summary).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the Disk Space Tool with the software in the McAfee Manual. One of ordinary skill in the art would have been motivated to do so for the efficiencies gained by notifying a user when disk space is running low and taking appropriate corrective actions (see the Disk Space Tool: page 1). Furthermore, combining these known elements into one software utility package produces a result that would be predictable to one of ordinary skill in the art.

The McAfee Manual also fails to disclose wherein said at least one maintenance task comprises reducing the size of log files stored on said at least one server in said distributed computing environment.

The Disk Cleanup article discloses deleting various files and reducing the size of files.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the Disk Cleanup Tool with the Disk Space Tool (the Disk Space article explicitly discloses this combination), and to combine these elements with the software in the McAfee Manual. This combination of known elements into one software utility package produces a result that would be predictable to one of ordinary skill in the art.

The cited references do not explicitly disclose automatically reducing the size of log files in response to an indication of low disk space. Rather, the Disk Space article discloses automatically generating a notification upon indication of low disk space that allows the user to

run the Disk Cleanup tool. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate this user step and automatically run the Disk Cleanup tool. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by automatically running the Disk Cleanup tool rather than waiting for a user input. Furthermore, it is obvious to automate processes. *See in re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Combining these known tools with the McAfee Utility into one software utility package produces a result that would be predictable to one of ordinary skill in the art.

Claim 5: The cited references do not explicitly disclose running a maintenance routine on demand in response to said monitoring step for improving operation of said at least one server in said distributed environment. Rather, the Disk Space article discloses automatically generating a notification upon indication of low disk space that allows the user to run the Disk Cleanup tool. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate this user step and automatically run the Disk Cleanup tool. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by automatically running the Disk Cleanup tool rather than waiting for a user input. Furthermore, it is obvious to automate processes. *See in re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Combining these known tools with the McAfee Utility into one software utility package produces a result that would be predictable to one of ordinary skill in the art.

Claim 6: The McAfee Manual discloses automatically backing up settings for said at

least one server to an archive in said distributed computing environment (see page 22: "McAfee

Image," disclosing wherein the product "saves information that you'll need if your hard disk ever

fails, including the boot record, partition tables and FAT information"; See also pages 43-44,

disclosing creating automatic backups).

Claim 8: The McAfee Manual discloses writing log files to said at least one server in

said distributed computing environment (see page 40, disclosing a report that "allows you to

view a log containing additional information").

Claim 12: The cited references do not explicitly disclose automatically alerting an

administrator when a maintenance task performed on said at least one server in said performed

excessively.

Examiner takes Official Notice that it is old and well-known in the computing arts to

determine when tasks are performed excessively in order to optimize resource availability. For

example, the Windows Disk Defragmenter notifies a user when it is not necessary to perform a

defrag because it is a waste of system resources. Thus, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to combine well-known techniques

into the software package of McAfee Utilities. Combining these known tools with the McAfee

Utility into one software utility package produces a result that would be predictable to one of

ordinary skill in the art.

Claim 13: The McAfee Manual discloses performing said at least one maintenance task

on said at least one server in said distributed computing environment at least once within a

predetermined period (see page 22: "McAfee Image," disclosing running the backup utility

daily).

Claims 14, 18-19, 21, 25-26, and 28: Claims 14, 18-19, 21, 25-26, and 28 are

substantially similar to claims 1, 5-6, 8, and 12-13 and are rejected under similar rationale.

Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the

McAfee Manual in view of the Disk Space article and the Disk Cleanup article, and further

in view of "How to Use the Backup Utility to Back Up Files and Folders in Windows XP

Home Edition" ("the Backup Tool article").

Claim 7: The McAfee Manual does not explicitly disclose automatically saving

configurations and authorizations for instances of applications running on said at least one server

in said distributed computing environment.

The Backup Tool discloses backing up system settings, including permissions (see page

2: step 6; see also bullet points at the bottom of page 2).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to combine the teachings of the Backup Tool with the software in the McAfee Manual.

One of ordinary skill in the art would have been motivated to do so for the efficiencies gained by

protecting data in the case of hard disk failure (see the Backup Tool: page 1: "More

Information"). Furthermore, combining known computer maintenance tools with the McAfee

Utility into one software utility package produces a result that would be predictable to one of

ordinary skill in the art.

Claim 20: Claim 20 is substantially similar to claim 7 and is rejected under similar

rationale.

Claims 11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the

McAfee Manual in view of the Disk Space article and the Disk Cleanup article, and further

in view of "Disk Defragmenter Error Codes ("the Error Codes article").

Claim 11: The McAfee Manual does not explicitly disclose automatically alerting an

administrator when a maintenance task performed on said at least one server in said distributed

computing environment fails.

The Error Codes Article teaches error codes that appear when the disk defragmenter is

unable to perform its task (see page 1).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to combine the teachings of the Error Codes Article with the software in the McAfee

Manual. One of ordinary skill in the art would have been motivated to do so for efficiencies

gained by notifying users of problems with maintenance operations (see page 1). Furthermore,

combining known computer maintenance tools with the McAfee Utility into one software utility

package produces a result that would be predictable to one of ordinary skill in the art.

Claim 24: Claim 24 is substantially similar to claim 11 and is rejected under similar

rationale.

(10) Response to Argument

Appellant argues that the cited references do not disclose a server in a distributed

computing environment (see Brief, page 10; the remainder of Appellant's arguments hinge on

this argument).

Regarding this argument, Examiner respectfully disagrees. On page iii, the McAfee

Manual discloses:

> You may use the Software on a Client Device as a **server ("Server") within a multi-**
> **user or networked environment ("Server-Mode")**.... A separate license is required
> for each Client Device or "seat" that may connect to the Server at any time, regardless of
> whether such licensed **Client Devices or seats are concurrently connected to,**
> **accessing or using the Software**. Use of software or hardware that reduces the number
> of **Client Devices or seats directly accessing or utilizing the Software** (e.g.
> **"multiplexing" or "pooling" software** or hardware) does not reduce the number of
> licenses required.... If the **number of Client Devices or seats that can connect to the**
> **Software** can exceed the number of licenses you have obtained, then you must have a
> reasonable mechanism in place to ensure that your use of the Software does not exceed
> the use limits specified for the licenses you have obtained.

(emphasis added). The highlighted portions show that McAfee Utilities was contemplated for

use on a server in a distributed computing environment. Computers throughout the network can

access and use the McAfee software. Applicant's specification discusses a distributed computing

environment with "middleware," which is computer software that runs on computers throughout

the network (see Specification, pages 7-8). The McAfee Manual discloses this as "multiplexing"

or "pooling" software. Thus, the software operates in a distributed computing environment in

that it is distributed for use by several computers.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Neil R. Kardos/

March 3, 2009

Conferees:

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